

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

LANE POWELL PC, an Oregon
professional corporation,

Plaintiff,

v.

MARK DeCOURSEY and CAROL
DeCOURSEY, individually and the marital
community composed thereof,

Defendants.

No. 11-2-34596-3SEA

PLAINTIFF'S OPPOSITION TO
MOTION FOR CR 11 SANCTIONS

Mark and Carol DeCoursey ("DeCourseys") ask this Court to sanction Lane Powell PC's ("Lane Powell") counsel. The DeCourseys rest their Motion for CR 11 Sanctions ("Motion") on arguments for which the DeCourseys have already been held in contempt by this Court. The DeCourseys' Motion is frivolous and, if anything, the DeCourseys should be sanctioned, not Lane Powell's counsel. Indeed, CR 11 authorizes this Court to sanction the DeCourseys without a motion from Lane Powell for the sort of abuse of the judicial system that this Motion represents. *See* CR 11 ("If a ... motion is signed in violation of this rule, the court ... upon its own initiative, may impose upon the person who signed it ... an appropriate sanction.").

1 The DeCourseys' Motion rests on a single sentence from Plaintiff's Motion for
2 Order of Contempt or Rule 37 Sanctions for Failure to Respond to Plaintiff's First Set of
3 Discovery Requests as Ordered ("Second Contempt Motion"). Mot. at 2 (citing Dkt. 101
4 at 4). The DeCourseys seek sanctions and fees based only upon their claim that the
5 Second Contempt Motion mischaracterized this Court's February 29, 2012 order (Dkt. 98)
6 denying the DeCourseys' request for reconsideration ("Reconsideration Order") of the
7 Court's February 3, 2012 order (Dkt. 93) granting Lane Powell's motion to compel the
8 DeCourseys to respond to Lane Powell's discovery requests. According to the
9 DeCourseys, Lane Powell mischaracterized this Court's Reconsideration Order by leaving
10 out the words "in accordance with CR 26(b) and ER 502" from the quotation in the
11 following sentence: "In that order, the Court required the DeCourseys to 'respond to
12 discovery requests in full with evidence and materials in accordance with this Court's
13 order of February 3, 2012.'" Mot. at 2 (citing Dkt. 101 at 4).

14 The DeCourseys, however, fail to inform the Court that Lane Powell's Second
15 Contempt Motion addressed and discussed the very argument that the DeCourseys raise
16 here (and that the DeCourseys claim Lane Powell was somehow hiding from the Court)—
17 specifically, the DeCourseys' claim that the Court's reference to CR 26(b) and ER 502 in
18 the Reconsideration Order somehow granted them relief on reconsideration (despite the
19 fact that the Court struck their proposed language relating to attorney-client privilege and
20 never called for a response from Lane Powell to the reconsideration motion). Indeed,
21 Lane Powell's Second Contempt Motion went on to quote the DeCourseys' email
22 response identifying those rules and describing their argument. Dkt. 101 at 5–6. Lane
23 Powell further stated in this regard that the DeCourseys "latch on to the [Court's] passing
24 citation to general evidence and discovery rules to twist the Court's order to mean the
25 opposite of what it actually says." *Id.* at 5. Further, the DeCourseys disregard the fact
26 that Lane Powell attached the order itself in full as an exhibit. Dkt. 102 Ex. B.

1 The DeCourseys likewise fail to inform the Court that their accusations now are
2 the same accusations they made in opposition to Lane Powell's Second Contempt Motion.
3 Dkt. 103 at 1-3, 7-8. And, of course, they fail to mention that the Court rejected these
4 accusations and granted Lane Powell's Second Motion for Contempt. Dkt. 106A
5 ("Contempt Order"). They further fail to mention that this Court's Contempt Order
6 specifically found that the DeCourseys' failure to comply with the Court's orders based on
7 their arguments and excuses, which includes their deliberate misreading of the Court's
8 Reconsideration Order, "has been without reasonable cause or justification." *Id.* at 2. Put
9 simply, the Court has already concluded that the argument upon which the DeCourseys'
10 current Motion is based is not only wrong but affirmatively unreasonable.

11 The DeCourseys' argument in this Motion is frivolous and made willfully without
12 reasonable cause or justification—just as it was when the DeCourseys used it to justify
13 defiance of this Court's discovery orders and relied on it to oppose Lane Powell's Second
14 Contempt Motion. *See id.* The DeCourseys' continued abuse of this Court and of Lane
15 Powell has continued unabated despite their being held in contempt and sanctioned.
16 (Indeed, because the DeCourseys have continued to defy this Court's orders, Lane Powell
17 has been forced to file yet another motion for contempt—its third so far in this case.) The
18 DeCourseys are correct that sanctions are warranted here, but not against Lane Powell's
19 counsel. *See* CR 11 (permitting court to impose sanctions on its own initiative).

20 DATED this 29th day of June, 2012.

21 McNAUL EBEL NAWROT & HELGREN PLLC

22
23 By: /s/ Malaika M. Eaton

Robert M. Sulkin, WSBA No. 15425

Malaika M. Eaton, WSBA No. 32387

24 Attorneys for Plaintiff
25
26

